IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 24TH AUGUST 2006 / 2ND BHADRA 1928

WP(C).No. 36389 of 2005(F)

PETITIONER:

BENNY SEBASTIAN,
S/O.DEVASSY, AGED 37, KANJOOTHARAN HOUSE,
MANJAPRA.P.O, ANGAMALY VIA.

BY ADV. SRI.JOHNSON MANAYANI
SRI.P.V.PAULSON

RESPONDENTS:

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1. THE MANAGER,
ST.MARY'S U.P.SCHOOL,
MANJAPRA.P.O, ANGAMALY VIA.,
ERNAKULAM DIST.683581.

2. THE HEADMASTER,
ST.MARY'S U.P.SCHOOL,
MANJAPRA.P.O, ANGAMALY VIAL,
ERNAKULAM DISTRICT.

3. THE SECRETARY TO EDUCATION,
TRIVANDRUM.

4. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, TRIVANDRUM.

5. THE DEPUTY DIRECTOR OF EDUCATION,
COLLECTORATE, ERNAKULAM.

6. THE ASSISTANT EDUCATIONAL OFFICER,
ANGAMALY.

BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
GOVT.PLEADER SMT.DP.RENU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: TRUE COPY OF APPLICATION DT. 22/10/2005.

EXT.P2: TRUE COPY OF PETITION DT. 25/11/2005 SUBMITTED B Y PETR. BEFORE R3 TO R6.

EXT.P3: TRUE COPY OF PAGE NO.1 OF SSLC BOOK.

EXT.P4: TRUE COPY OF PETITIONER'S DRIVING LICENCE.

EXT.P5: TRUE COPY OF PASSPORT.

EXT.P6: TRUE COPY OF LAND TAX.

EXT.P7: TRUE COPY OF MEDICAL CERTIFICATE.

RESPONDENTS' EXHIBITS:

EXT.R1(A): TRUE COPY OF BAPTISM REGISTER

A.K. Basheer, J.

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W.P(C) No. 36389 of 2005-F

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Dated this the 24th day of August, 2006.

J U D G M E N T

Is the petitioner entitled to get appointment in the school under the management of respondent No.1, under the Dying-in-Harness Scheme? The above question has come up for consideration in this writ petition in the following facts and circumstances.

2. Petitioner's father Sri.K.D.Davassy passed away on June 8, 1988 while he was serving in the school as Headmaster. Petitioner was the second son of late Devassy. Apart from the petitioner, Sri.Devassy had 6 daughters. It is contended by the petitioner that on the death of his father, the family fell in utter poverty. In 2005 petitioner submitted an application for appointment to the post of Peon, when it was known that such a vacancy existed. A copy of the application is on record as Ext.P1. However, petitioner apprehended that he was not likely to be invited for the interview. It was at that stage that the petitioner had filed this writ petition praying for an appropriate direction to respondent No.1, the Manager, to appoint the petitioner to the post of Peon available in the school.

3. In the counter affidavit it is stated that the petitioner has already crossed the age of 39. He is not entitled to get the appointment under the Dying-in-Harness Scheme. At the time of his father's death, petitioner was 22 years old. The claim for the benefit of the Scheme has been made 17 years after the death of his father. Sri.Devassy's family possesses considerable extent of land apart from the rental income from buildings situated in Manjapra town. A hotel which was being run by late Devassy is now rented out. It is further contended in the additional

counter affidavit that the claim for compassionate appointment is highly belated. For that sole reason, the writ petition is liable to be dismissed.

4. Having heard learned counsel for the parties and having perused the materials on record, I have no hesitation to hold that the writ petition is liable to be dismissed.

5. As mentioned earlier, Sri.Devassy had passed away in the year 1988. Admittedly the petitioner was aged 22 years at the time of his father's death. Though petitioner had vaguely contended in the reply affidavit that he had approached respondent No.1 with a request to give him appointment in the school shortly after his father's death, the Manager has vehemently denied the above contention. It is pertinent to note that petitioner had not made any such averment in the writ petition. Admittedly he had submitted Ext.P1 application only in October 2005. More importantly, Ext.P1 application is not in the prescribed format. Petitioner had not produced the relevant documents to show the income of the family to entitle him to get the benefit of the Scheme as prescribed under the Rules (G.O.(P) No.12/99/P&ARD dated 24.5.1999).

In ***Manager, Parli High School v. Narayanan (***2002(3) KLT 912) , a Division Bench of this Court has held that reservation of a vacancy for compassionate appointment to the dependant of an employee who died in harness is permissible only for a reasonable period even though no time limit has been prescribed for making the claim. There should be proximity between the date of death of the employee and the application for compassionate appointment. A similar view was taken by another Division Bench in ***Deepak v. Secretary, General Education Department*** (2002 (3) KLT 288).

7. In ***Sarada v. Pradeep Kumar*** (2004 (3) KLT 1019) the claim

made by the dependant of a deceased employee after 23 years of his father's death was rejected by another Division Bench,.

8. In ***Sukumaran Nair v. State of Kerala*** (2005 (1) KLT 430) also the same view was followed . The dicta laid down by their Lordships of the Supreme court in ***Sushma Gosain & Ors. v. Union of India & Ors.*** [(1989) 4 SCC 468], in ***Umesh Kumar Nagpal v. State of Haryana & Ors.*** [(1994) 4 SCC 138], in ***State of Haryana & Ors. v. Rani Devi & anr.*** [(1996) 5 SCC 308] etc. were followed by this Court in the judgments mentioned supra.

9. In the above facts and circumstances, particularly in the absence of any material to show that the deceased employee's family had fallen in penury on his death and that it was faced with acute financial stringency or crisis due to the death, I am satisfied that the contentions raised by respondent No.1 are liable to be accepted. The delay of more than 17 years in making the claim for compassionate appointment is undoubtedly fatal.

The Writ Petition fails. Accordingly it is dismissed.

A.K. Basheer
Judge.

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